

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ARSENIO ANAYA,

Petitioner,

v.

No. 1:22-cv-00231-KWR-KK

FNU HATCH,

Respondent.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Arsenio Anaya's Petition for Writ of Habeas Corpus filed March 28, 2022 (Doc. 1) (Petition). Anaya challenges his state convictions stemming from intoxicated driving. *See* Doc. 1 at 4; *State v. Anaya*, New Mexico's Fourth Judicial District Court, Case No. D-412-cr-2017-251. He argues that conducting a blood test constitutes an unreasonable search and seizure. Anaya filed a federal § 2254 petition challenging the same state conviction on August 26, 2021. *See Anaya v. Hatch*, 21-cv-0834 KG-CG. The case survived screening and was referred to the Honorable Carmen Garza, who issued proposed findings and a recommended disposition on April 13, 2022. The objection deadline has not yet run, when accounting for service by mail, and the matter is still pending.

Ordinarily, a second habeas petition challenging the same conviction as an earlier habeas proceeding is subject to the restrictions in 28 U.S.C. § 2244(b). Under that section, District Courts cannot entertain second or successive habeas claims absent authorization from the Circuit. *See* 28 U.S.C. § 2244(a)-(b). Such claims are generally dismissed for lack of jurisdiction, but they may be transferred to the Circuit under certain circumstances. *See In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (citing 28 U.S.C. § 2244(b) and setting forth factors governing dismissal versus transfer).

Section 2244 does not address whether a second *pro se* habeas petition, filed before a final ruling on the first habeas petition, is subject to the limitations on second or successive claims. Most courts hold § 2244 does not apply, and “when a [second habeas] motion is filed before adjudication of an initial [habeas] motion is complete, the district court should construe the second [filing] ... as a motion to amend the pending” habeas pleading. *Ching v. United States*, 298 F.3d 174, 177 (2d Cir. 2002). *See also Woods v. Carey*, 525 F.3d 886, 889–90 (9th Cir. 2008) (applying the rule to § 2254 petitions); *United States v. Williams*, 185 Fed. App’x. 917, 919 (11th Cir. 2006) (applying the rule to § 2255 motions); *United States v. Sellner*, 773 F.3d 927, 931 (8th Cir. 2014) (“we now join our sister circuits and hold that when a *pro se* petitioner files a second [habeas filing] ... while her first ... is still pending before the district court, the second motion is not barred by [§ 2244] ... and should be construed as a motion to amend”); *Neihart v. United States*, 2017 WL 3726765, at *3 (D.N.M. Aug. 28, 2017) (acknowledging the majority view). Such construction is consistent with Supreme Court precedent, which suggests that § 2244 only applies to adjudicated claims. *See Gonzalez v. Crosby*, 545 U.S. 524, 529-30 (2005) (citing § 2244(b)(1) and noting “any claim that has *already been adjudicated* in a previous petition must be dismissed” as second or successive) (emphasis added).

The Clerk’s Office used the Petition filed March 28, 2022 to open a new § 2254 case, as it is not labelled as an amendment and does not contain any citation to Anaya’s pending case, 21-cv-0834 KG-CG. In light of the liberal construction accorded to *pro se* filings, and consistent with the above precedent, the Court declines to construe the instant Petition as an unauthorized successive habeas claim. The Court will direct the Clerk’s Office to re-file the Petition in Anaya’s pending habeas case, 21-cv-0834 KG-CG, and administratively close this case.

IT IS ORDERED that the Clerk's Office **SHALL FILE** Arsenio Anaya's Petition for Writ of Habeas Corpus (**Doc. 1**) in Case No. 1:21-cv-00834-KG-CG (*Anaya v. Hatch et al*); and this case is **ADMINISTRATIVELY CLOSED**.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE